

STATE BOARD TO REVIEW CLAIMS

MEETING OF FEBRUARY 29, 1996
Reno, Nevada

ITEM: IV.A.

SUBJECT: Resolution to adopt a policy regarding the reimbursement of costs associated with Underground Storage Tank (UST) removals

DISCUSSION: The State Board to Review Claims has, in the past, allowed reimbursement for UST removal costs. Such reimbursement was allowed when it was demonstrated that the UST removal was either required by a regulatory oversight agency, necessitated by a known release from the UST, or was necessary to implement a remediation plan at the facility.

The removal of an UST is not necessary to effect a remediation. Remediation of impacted environmental media can be achieved in-situ without UST removal. The reimbursement of an UST removal may therefore not be a least costly option to achieve remediation when other remediation options exist that do not include an UST removal.

The proposed resolution would require that NDEP would not recommend to the Board any cost associated with UST removals except where cost effectiveness (monetary only) can be demonstrated for those cases where a release was detected prior to the UST removal. All other UST owners would have the opportunity to appeal the facts of their specific case to the Board.

Comments were received on the proposed resolution from the Washoe County District Health Department in favor of the proposal.

RECOMMENDATION: Adoption of Resolution No. 96-001 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 96-001

Resolution to Adopt a Policy Regarding
the Reimbursement of Costs Associated with
Underground Storage Tank Removals

Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. In the past, the Board has authorized payments to reimburse the costs of Underground Storage Tank (UST) removals (including non-regulated USTs such as those used to store heating oil) when:
 - a. it was demonstrated that a site was contaminated prior to the removal of an UST, or
 - b. it was determined that removal of the UST was necessary to effect remediation.
2. 40 CFR 280.72 requires the assessment of a site whenever a change in service or a closure of an UST occurs. 40 CFR 280.72 does not specify that the assessment must be conducted prior to the UST change in service or removal.
3. In many circumstances, an assessment was performed prior to an UST removal because of the misconception that the assessment is required prior to tank closure. Such assessments may demonstrate the presence of a contamination and the need for corrective action. Resulting documentation demonstrating the presence of a release has been used to justify the reimbursement of an UST removal expense.
4. The removal of an UST is not necessary to effect a remediation. Remediation of impacted environmental media can be achieved in-situ without removing an UST.
5. The reimbursement of an UST removal may therefore not be a least costly option to achieve remediation when other remediation options exist that do not include an UST removal.

THEREFORE BE IT RESOLVED:

1. No requests for reimbursement shall be recommended to the Board for an UST removal cost when the UST removal occurred prior to any assessment activities.
2. No requests for reimbursement shall be recommended to the Board for an UST removal cost when the UST removal occurred after assessment activities confirmed a release from the respective UST, unless an analysis of three remediation alternatives is made that accurately demonstrates remediation involving UST removal is the least expensive option. The reimbursement/non-reimbursement decision shall be based solely on monetary comparisons.
3. Arguments for variations from this policy may be heard by the Board on a case by case basis at the time the specific claim is first heard.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on February 29, 1996.

John Haycock, Chairman
State Board to Review Claims